HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. 782 of 2003

Santan Singh Rawat vs. State and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 7.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 782 of 2003 (SS)

Santan Singh Rawat son of Sri Khushal Singh Rawat
Provisional Division, P.W.D. Gopeshwar ……..…… Petitioner

Versus

1. State of Uttaranchal
2. Chief Engineer, State-1, PWD, Dehradun
3. Executive Engineer, Provincial Division,
   P.W.D. Gopeshwar, District Chamoli …… Respondents

Sri Rajendra Dobhal, Advocate for the petitioner
Standing Counsel for the respondents

Hon'ble Rajesh Tandon, J.

Rule. Respondents waived service.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ prder or direction in the nature of certiorari quashing the order dated 6.7.2003.

Briefly stated the facts giving rise to the present writ petition are that in a month of July 2000 the petitioner was posted as Junior Engineer (Civil) in Temporary Division, P.W.D. Kirti Nagar, District Tehri Garhwal. The petitioner on his own request was transferred on 17.7.2002 to Provincial Division, P.W.D. Gopeshwar, District

Chamoli. The petitioner joined his duty on 20.,7.2002 there and since then petitioner has been working on the post of Junior Engineer (Civil) at the said place. The petitioner has stated that he has two children one Master Ashish who is studying in class III and his daughter Km. Shikha is studying in class V, at Gopeshwar. The petitioner has further alleged that his mother Smt. Sureshi Devi is aged about 72 years and is residing with the petitioner at Gopeshwar.

The grievance of the petitioner is that he has still not completed one year stay at Gopeshwar and vide order dated 6.7.2003 he has been transferred to the Construction Division, P.W.D. Barkot, District Uttarkashi. The children of the petitioner are studying at Prem Vidhya Mandir Gopeshwar, District Chamoli and his ailing mother is also residing with him at Gopeshwar. His transfer has been made in the mid term and, therefore, will adversely affect the studies of his children.

The petitioner has stated that he has also made a representation to the respondent no.2 requesting him for revoking the transfer order but the respondents have not decided his representation till now.

So far as the transfer order is concerned no intereference can be made under Article 226 of the Constitution of India.

It has been held by the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532* as under*:*

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected partly should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioners are at liberty to approach the higher authority.

The Apex Court in the case State Bank of India vs. Anjan Sanyal and others (2001) 5 SCC 508. It has held as under:

"An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

However, in the case of Director of School Education vs. O. Karuppa Thevan and another (1994 Supp (2) Supreme Court Cases 666 the Apex Court has held as under:

When the authorities made the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the

impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

As stated above the petitioner has already made a representation to the respondents against his transfer order dated 6.7.2003. The respondents are, therefore, directed to consider the representation of the petitioner and to pass appropriate orders in the light of the observations made above, within a month after receipt of certified copy of this order. The transfer order shall remain in abeyance for a period of six weeks only, if the petitioner has not already been relieved.

With the aforesaid observations the writ petition is dismissed. No order as to costs.

07.11.2003 **(Rajesh Tandon, J.)**
*Dhyani